

AIRPORT SEWER PLANNING AREA AVAILABILITY FEE AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2003 between ----- and **FAUQUIER COUNTY**, a public body politic and corporate, (the “County”), recites and provides as follows:

RECITALS

R-1: The Landowner(s) own(s) one or more parcels of land (the “Agreement Property”) within the Airport Sewer Planning Area (ASPA), identified on the Fauquier County Tax Map as PIN(s) «PIN»; and

R-2: The County proposes to extend the availability of public sewer services to properties within the ASPA by the construction of certain sewage collection and treatment infrastructure and related facilities; and

R-3: The location of the Airport Sewer Planning Area (ASPA) shall substantially conform to, but be not limited by, the location detailed in Exhibit A –; and

R-4: The Landowner(s) wish(es) to have sewage treatment capacity assigned to the Agreement Property and, in support of the design and construction of the ASPA Sewer System, is/are willing to pay certain Sewer Availability Fees and Phase II Availability in order to expedite the design and construction of the ASPA Sewer System, subject to the terms and conditions as hereinafter stated; and

R-5: The Landowner(s) and the County wish(es) to memorialize in writing the terms of his or her/their agreement as to his or her/the funding being provided in support of the design and construction of the ASPA Sewer System.

AGREEMENT

NOW THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landowner(s) and the County, intending to be legally bound, hereby agree(s) as follows:

A-1: The Project

- A. The Landowner(s) understand(s) and acknowledge(s) that the design and construction of the Project necessary for the provision of sewer services to the Agreement Property and other properties in the ASPA, is currently estimated at \$ 440,000 and that the Project is contingent upon the award of the construction contract by the Fauquier County Board of Supervisors.
- B. The project is divided into two Phases. Phase I includes the design and permitting of the entire system and extension of service to existing businesses that utilize capacity of up to 4,400 gallons a day. In Phase II a discharge permit will be sought to free-up the balance of the system capacity (4,400 gallons) to become available to other properties within the airport service area. It is anticipated that the County will contract with the Fauquier County Water and Sanitation Authority to operate the facility and transfer ownership of the system to WSA once Phase II is completed.
- C. The Landowner(s) also understand(s) and acknowledge that the County in its sole discretion shall determine the exact location of each component of the Project. Said determination shall be based upon, but not limited to, field surveys, topographic conditions, engineering principles and economic considerations; and
- D. The Landowner(s) also understand(s) and acknowledge(s) that any and all sewage treatment capacity, if and when available to properties within the Airport Sewer Planning Area Phase One, will currently be assessed a Sewer Availability Fee of \$50.00 per gallon per day of sewer capacity. A Phase II Availability Fee of \$25 per gallon per day of sewer capacity will be assessed for sewer treatment capacity to become available in Phase Two of the project. The Phase II Availability Fee will be credited to the final sewer availability charge to be determined based on the construction costs for the system. The design capacity for the landowner will be determined by the County based upon current and planned use of the property.
- E. The Landowner(s) further understand(s) and acknowledge that any and all Sewer Availability Fees collected on account of properties located within the ASPA, will be used for the design, construction and expansion of the ASPA as deemed necessary or desirable by the County; and
- F. The Landowner(s) finally understand(s) and acknowledge(s) that, the Sewer Availability Fees and the Phase II Availability fee are not refundable, except that if the County fails to award the initial construction contract within twelve (12) months of the date of this agreement or if construction for Phase Two is not complete 12 months following the completion of Phase One, the County will refund the Sewer Availability Fees and Phase II Sewer Availability Fees in the manner provided for in Section A-4D of this Agreement.

A-2: Landowner(s) Support

- A. The Landowner(s) hereby tender(s) an amount of \$ 18,750 in Sewer Availability Fees or Phase II Availability Fee, as evidenced by my/our check/letter of credit, designated as Exhibit B –Sewer Availability Fee Payment, attached hereto and being the amount assessed for the availability of 375 gallons per day of sewage treatment capacity intended for assignment to the Agreement Property;
- B. The Landowner(s) understands and agrees that the availability of capacity referred to in the preceding section is not assignable to any other property, whether or not such other property is owned by the Landowner; and
- C. The Landowner(s) understand and hereby acknowledge that he/she/it/ she/they will grant and convey to the County on its standard easement form any and all easements, determined by the County in its sole discretion to be required or desirable in support of the Project on or across the Agreement Property, at no cost to the County.
- D. The Landowner will be responsible to provide the connection from the wet well of the pumping station that will be constructed as part of the Project to the facilities to be served at his sole expense. The Landowner will also provide electricity to the grinder pump facility on a continuing basis and at his sole expense.

A-3: Rates, Fees and Other Charges

The County intends to contract with Fauquier County Water and Sanitation Authority to operate the system. The County will establish a rate schedule as follows:

- 1. Fauquier WSA will recommend to the County annually a rate schedule sufficient to cover all costs and charges associated with the operation, maintenance, repairs and improvements to the system
- 2. The County will establish a rate schedule, at its discretion, determining the usage fees desired to recover the costs of operating the system.

A-4: County Obligations

- A. The County shall determine, on or before 30 September 2003, whether or not sufficient funds have been collected in support of the design and construction of the Project for the project to proceed.

- B. In the event that the County has determined that sufficient funds have been collected in support of the design and construction of the Project, the County shall so notify the Landowner(s) providing him/her/it/them a Plan of Action and Milestones outlining the highlights and an estimated schedule of the Project; and
- C. The County shall initiate the construction of the Project and, upon completion of the Project's construction, assign 375 gallons per day of sewage treatment capacity to the Agreement Property.
- D. The County will determine in its sole discretion when the Project has been completed and when it can accept sewage from the Agreement Property into the ASPA Sewer System. In the event that the design and construction of the Project are undertaken but not completed, the County shall pay all expenses related to the design and construction of the Project incurred up to the date of its decision to terminate the Project and, no later than one hundred and eighty (180) days thereafter, return to the Landowner, with no interest, a pro rata share of any available remaining funds collected in support of the design and construction of the Project. If any claims are pending against the County or are deemed likely by the County in connection with the Project, the County may retain Funds deemed by it adequate as a reserve against such claims or potential claims until such claims are resolved by agreement, by litigation or by running of the applicable statute of limitations; or
- E. In the event that the County has determined, on or before 30 August 2003, that insufficient funds have been collected in support of the design and construction of the Project for the Financing Agreement to proceed, the County shall so notify the Landowner(s) and return, with no interest, the Sewer Availability Fees and Phase II Sewer Availability Fee, tendered as set out in Article A-2 herein to the Landowner(s), on or before 30 October 2003.

A-5: Landowner's(s') Representations

The Landowner(s) represent(s) and warrant(s) to the County as follows:

- A. The Landowner(s) has/have received and reviewed all information, which he/she/it/they deem(s) relevant to participation in this Agreement. The Landowner(s) understand(s) such information and has sought such advice from independent professionals as he/she/it/they deem(s) appropriate. The Landowner(s) understand(s) that participation in this Agreement is speculative and that any economic benefits which may be derived therefrom are uncertain; and
- B. The Landowner(s) has/have had an opportunity to ask questions of and receive answers from representatives of the County concerning the subject matter of this Agreement.

The above representations and warranties shall survive execution of this Agreement and of any Exhibits.

A-6: No Liability

The County shall incur no liability to the Landowner(s) under this Agreement for failure to collect sufficient monies in support of the design and construction of the Project, for failure to proceed with the design and construction of the Project, or for failure to complete the design and construction of the Project.

A-7: Termination

The County shall have the right but not the obligation to terminate this Agreement upon the occurrence of any one or more of the following:

- A. The determination that the costs for the design and construction of the ASPA Sewer System exceeds \$440,000;
- B. Failure of the Health Department, Department of Environmental Quality or other Federal, State or County agency to grant the necessary approvals for the project.

A-8: Entire Agreement

This Agreement including its Exhibits constitutes the entire agreement among the parties hereto with respect to the transactions contemplated hereby and supersedes all prior discussions, understandings, agreements and negotiations among the parties hereto. Only a written instrument duly executed by the parties hereto may modify this Agreement.

A-9: Non-Ownership of Facilities by Others

This Agreement shall not create or establish any ownership in any part of the County's system in any party other than the County.

A-10: No Third-Party Beneficiaries

This Agreement shall inure solely to the benefit of the Parties thereto, and nothing contained herein is intended to or shall confer upon any person not a party hereto any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

A-11: Successors and Assigns

This Agreement shall bind and inure to the benefit of the parties and their respective legal representatives, successors and assigns. Notwithstanding the foregoing, the Landowner may not assign its rights or obligations hereunder, in whole or in part, without the prior written consent of the County, in the County's sole discretion.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

LANDOWNER(S):

«OwnerContact»

ATTEST:

By: _____

By: _____

COUNTY:

FAUQUIER COUNTY

ATTEST:

By: _____

Anthony I. Hooper
Assistant County Administrator